

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

US DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

MAR 25 2019

By DOUGLAS F. YOUNG, Clerk
Deputy Clerk

UNITED STATES OF AMERICA,
PLAINTIFF

v.

A BRYCO ARMS .380 CALIBER PISTOL
DEFENDANT PROPERTY

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)
) Civil No. 19-4033
)
)
)

COMPLAINT FOR FORFEITURE IN REM

Plaintiff, United States of America, by and through Duane (DAK) Kees, United States Attorney for the Western District of Arkansas, and the undersigned Assistant United States Attorney, brings this complaint and alleges as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:

NATURE OF THE ACTION

1. This is an action to forfeit property to the United States for violations of 18 U.S.C. § 922 *et seq.* and as such is forfeitable under 18 U.S.C. § 924(d).

THE DEFENDANT IN REM

2. The Defendant Property is a Bryco Arms .380 caliber pistol, serial number 1522515 (hereinafter referred to as "THE DEFENDANT PROPERTY"), which was seized from the Miller County, Arkansas Sheriff's Office on March 7, 2019, which is in the Western District of Arkansas, Texarkana Division, after having previously been seized from Randy Phillips on January 4, 2016, and is presently in the custody of the Federal Bureau of Investigation.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. §§ 1355(a), 1355(b)(1)(A) and 1395(b).

4. This Court has *in rem* jurisdiction over THE DEFENDANT PROPERTY as:

a. pursuant to 28 U.S.C. § 1355(b)(1)(A), acts or omissions giving rise to the forfeiture occurred in this district; and

b. pursuant to 28 U.S.C. § 1355(b)(1)(B), incorporating 28 U.S.C. § 1395, because the action accrued in this district.

5. Venue is proper in this district as:

a. pursuant to 28 U.S.C. § 1355(b)(1)(A) because acts or omissions giving rise to the forfeiture occurred in this district; and

b. pursuant to 28 U.S.C. § 1395, because the action accrued in this district.

BASIS FOR FORFEITURE

6. THE DEFENDANT PROPERTY is subject to forfeiture pursuant to 18 U.S.C. § 924(d) because they are a firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of 18 U.S.C. § 922.

FACTS

7. Please see the Affidavit of Federal Bureau of Investigation Special Agent Micah Sexson, attached hereto as Exhibit "A." The attached affidavit is hereby incorporated herein as if word-for-word and made a part of this Complaint. As such, the Affidavit and all additional paragraphs are reincorporated here as if alleged herein and require a responsive pleading to each separate averment contained therein.

CLAIM FOR RELIEF

WHEREFORE the United States prays that THE DEFENDANT PROPERTY be forfeited to the United States, that the plaintiff be awarded its costs and disbursements in this action, and for such other and further relief as the Court deems proper and just.

Respectfully submitted,
DUANE (DAK) KEES
UNITED STATES ATTORNEY

By: _____

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VERIFICATION

I, Micah Sexson, hereby verify and declare under penalty of perjury that I am a Federal Bureau of Investigation Special Agent, that I have read the foregoing Verified Complaint in Rem and know the contents thereof, and that the matters contained in the Verified Complaint are true to my own knowledge, except that those matters herein stated to be alleged on information and belief and as to those matters I believe them to be true.

The sources of my knowledge and information and the grounds of my belief are the official files and records of the United States, information supplied to me by other law enforcement officers, as well as my investigation of this case, together with others, as a Special Agent with the Federal Bureau of Investigation.

I hereby verify and declare under penalty of perjury that the foregoing is true and correct.

Dated this 25th day of MARCH 2019.

A handwritten signature in blue ink, appearing to read 'M. Sexson', is written over a horizontal line.

Micah Sexson
Special Agent
Federal Bureau of Investigation

EXHIBIT A

**AFFIDAVIT IN SUPPORT OF APPLICATION
FOR FORFEITURE OF PROPERTY**

I, Micah Sexson, Special Agent, Federal Bureau of Investigation, Little Rock, Arkansas, being duly sworn in the manner provided by law, hereby depose and state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation, and have been since 2011. Prior to that, I was a police officer with the North Little Rock Police Department in North Little Rock, Arkansas since 2003. I attended Harding University in Searcy, Arkansas and obtained a Bachelor of Science degree in Criminal Justice. I am currently assigned with the Texarkana Resident Agency, which is located in the Western District of Arkansas. I am assigned to investigate federal violations found in Title 18 and Title 21 of the United States Code. During my years as a Special Agent with the FBI, I have been involved in numerous investigations of federal crimes, including this investigation of violations of Title 18 United States Code Sections 922(g)(1) and 942(a)(2).

2. On January 4, 2016, Arkansas State Police Trooper Glendon Flowers conducted a traffic stop on a 1999 Chevrolet C/K 1500 pickup truck for defective/improper tail lamps near Arkansas State Highway 237 and Miller County Road 446, just south of Texarkana, Arkansas, which is in the Western District of Arkansas, Texarkana Division.

3. The driver was identified as Randy Phillips, who had two felony warrants out of Cass County, Texas.

4. Trooper Flowers arrested Phillips on the outstanding Texas warrants.

5. During a search incident to Phillips's arrest, Trooper Flowers recovered a .380 Caliber Bryco Arms Pistol, Serial Number 1522515 (hereinafter "THE DEFENDANT PROPERTY"), in Phillips's back pocket.

6. THE DEFENDANT PROPERTY was seized by Trooper Flowers and transported to the Miller County, Arkansas Sheriff's Office, which is located in the Western District of Arkansas, Texarkana Division.

7. On January 26, 2016, Bureau of Alcohol, Tobacco, Firearms and Explosives Special Agent Tony McCutcheon examined THE DEFENDANT PROPERTY, and was able to determine that it was not manufactured in Arkansas.

8. Based upon SA McCutcheon's finding that THE DEFENDANT PROPERTY was manufactured outside of Arkansas, the presence of the pistol in Arkansas required that it travel in and/or affected interstate commerce.

9. At the time of the traffic stop, Phillips had the following prior felony convictions:

- a. Theft of Property out of Texas's 402nd District Court in April 2009; and
- b. Abandoning or Endangering a Child out of Texas's 271st District Court in November 2014.

10. On January 27, 2016, a grand jury in the Western District of Arkansas indicted Phillips in a two-count indictment, which included a forfeiture allegation alleging that THE DEFENDANT PROPERTY was subject to forfeiture¹. Count One of the indictment charged Phillips with being a felon in possession of a firearm for his possession of THE DEFENDANT PROPERTY on January 4, 2016.

11. On March 31, 2016, Phillips pleaded guilty to Count One of the Indictment and agreed to forfeit THE DEFENDANT PROPERTY.

12. However, the forfeiture allegation was dismissed at sentencing.

13. On February 26, 2019, I obtained a seizure warrant to seize THE DEFENDANT PROPERTY from the Miller County, Arkansas Sheriff's Office.

¹ *United States v. Phillips*, W.D.Ark. 4:16CR40002.

14. On March 7, 2019, I executed the above-referenced seizure warrant and took possession of THE DEFENDANT PROPERTY, which is currently in the possession of the Federal Bureau of Investigation.

FURTHER AFFIANT SAYETH NOT.



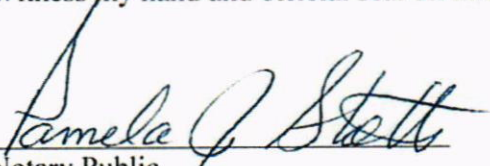
Micah Sexson
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before me this 25th day of MARCH, 2019.

State of Arkansas)
County of Miller)

Before me, the above authority personally appeared, Special Agent Micah Sexson, who having produced his Federal Bureau of Investigation credentials as identification and having being duly sworn, states that the foregoing is true to the best of his knowledge, information, and belief.

Witness my hand and official seal on this 25th day of March 2019.



Notary Public
Commission Expires: 01-13-2020

(seal)

